

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS,
individually and as Successor
in Interest for RICHARD
DESANTIS, deceased, and as
Guardian Ad Litem for DANI
DESANTIS, a minor and TIMOTHY
FARRELL, a minor,
Plaintiffs,

CERTIFIED COPY

vs. CASE NO. C 07 3386 JSW
CITY OF SANTA ROSA, JERRY
SOARES, RICH CELLI, TRAVIS
MENKE, PATRICIA MANN and DOES
through 25, inclusive,

Defendants.

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DEPOSITION OF TRAVIS MENKE

November 15, 2007

Pages 1 through 117

Reported by: HANNAH KAUFMAN & ASSOCIATES, INC.
JUDY A. MANFRED Certified Shorthand Reporters
CSR No. 4748 472 Pacheco Street
San Francisco, California 94116
(415) 664-4269

1	I N D E X		1	TRAVIS MENKE,
2		PAGE	2	sworn as a witness by the Certified
3	DEPOSITION OF TRAVIS MENKE		3	Shorthand Reporter, testified as follows:
4	EXAMINATION BY MR. SCOTT	5	4	-oOo-
5			5	THE VIDEOGRAPHER: Good afternoon. This marks
6	E X H I B I T S		6	the beginning of volume 1, videotape 1 in the deposition
7	PLAINTIFFS'	PAGE	7	of Travis Menke in the matter of Patricia Desantis, et
8	2 A diagram, not to scale	72	8	al., versus City of Santa Rosa, et al., in United States
9			9	District Court, Northern District of California, case
10			10	number C 07 3386 JSW. Today's date is November 15th, 2007
11			11	and the time is 2:03. The location of this deposition is
12			12	1375 Sutter Street, Suite 222, San Francisco, California.
13			13	The deposition was noticed by John Scott of Scott Law Firm
14			14	and the videotape is being produced on behalf of the
15			15	plaintiff. The video operator is James Taylor, a
16			16	California Notary Public for the County of San Francisco,
17			17	employed by Dan Mottaz Video Productions, LLC, 182 Second
18			18	Street, Suite 202, San Francisco, California 94105,
19			19	415-624-1300. The Court Reporter is Judy Manfred.
20			20	Would counsel like to re-introduce themselves and
21			21	state whom they represent.
22			22	MR. SCOTT: John Scott appearing for the
23			23	plaintiffs.
24			24	MR. SAFIRE: Eric Safire appearing for
25			25	plaintiffs.
		2		4
1	BE IT REMEMBERED that pursuant to Notice of		1	MS. FOWLER: Caroline Fowler, Assistant City
2	Taking Deposition, and on Thursday, the 15th day of		2	Attorney, appearing for the defendants.
3	November, 2007, commencing at the hour of 2:03 p.m.		3	THE VIDEOGRAPHER: If there are no stipulations
4	thereof, at the offices of The Scott Law Firm, 1375 Sutter		4	the Court Reporter may administer the oath.
5	Street, Suite 222, San Francisco, California, before me		5	(The oath was administered by the Court
6	JUDY A. MANFRED, a Certified Shorthand Reporter in the		6	Reporter.)
7	State of California, personally appeared,		7	(Confidential portion (bound separately) on
8	TRAVIS MENKE,		8	page 118.)
9	called as a witness herein; and the said witness, being by		9	EXAMINATION BY MR. SCOTT
10	me first duly sworn, was thereupon examined and testified		10	MR. SCOTT: Q. Good afternoon. Would you state
11	as is hereinafter set forth.		11	your full name for the record, please.
12			12	A. Yeah. Travis Menke, M-e-n-k-e.
13	APPEARANCES		13	Q. Are you an officer with the Santa Rosa Police
14	THE SCOTT LAW FIRM, 1375 Sutter Street, Suite		14	Department?
15	222, San Francisco, California 94109, represented by JOHN		15	A. Yes, I am.
16	H. SCOTT, Attorney at Law, appeared on behalf of the		16	Q. Were you present when Richard Desantis was shot
17	Plaintiffs.		17	and killed in April of this year?
18	The Law Offices of ERIC SAFIRE, 2431 Fillmore		18	A. Yes, I was.
19	Street, San Francisco, California 94115, represented by		19	Q. And were you on duty at the time?
20	ERIC SAFIRE, Attorney at Law, appeared on behalf of the		20	A. Yes, I was.
21	Plaintiffs.		21	Q. Do you prefer being called Officer Menke or
22	OFFICE OF THE CITY ATTORNEY, 100 Santa Rosa		22	Mr. Menke?
23	Avenue, Santa Rosa, California 95402-1678, represented by		23	A. Officer Menke is fine. Officer.
24	CAROLINE L. FOWLER, Assistant City Attorney, appeared on		24	Q. Officer Menke, my name is John Scott and I'm one
25	behalf of the Defendants.		25	of the lawyers who represents the widow and the child of
		3		5

<p>1 Q. And did you walk, run or go in some other</p> <p>2 fashion?</p> <p>3 A. Walked.</p> <p>4 Q. Why did you walk?</p> <p>5 A. It was a brisk walk. I didn't know specifically</p> <p>6 where the house was and I was trying to move tactically</p> <p>7 quietly staying out of the light.</p> <p>8 Q. Had you drawn your handgun at that point?</p> <p>9 A. At getting out of my car?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, I did.</p> <p>12 Q. Why?</p> <p>13 A. Because there was a subject shooting a gun and I</p> <p>14 wanted to be prepared. And at that point I was not sure</p> <p>15 what I was walking into so for my safety I drew my</p> <p>16 handgun.</p> <p>17 Q. What kind of handgun did you have with you that</p> <p>18 night?</p> <p>19 A. It's the H&K 40-caliber semi-automatic pistol.</p> <p>20 Q. Do you have it with you here today?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. It's my duty firearm.</p> <p>24 Q. Do you have another weapon that you carry off</p> <p>25 duty?</p> <p style="text-align: right;">58</p>	<p>1 A. I don't know.</p> <p>2 Q. Have you ever shot anyone else?</p> <p>3 A. No.</p> <p>4 Q. Have you ever gone hunting?</p> <p>5 A. No.</p> <p>6 Q. When you received your training at Santa Rosa in</p> <p>7 firearms did you shoot at moving targets?</p> <p>8 A. In Santa Rosa?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. So your training at Santa Rosa has been to shoot</p> <p>12 at stationary targets?</p> <p>13 A. Yes.</p> <p>14 Q. Just at the range?</p> <p>15 A. Yes.</p> <p>16 Q. And is that a silhouette or some other target?</p> <p>17 A. It's the -- you know, has the rings and it's in</p> <p>18 the shape of an upper torso.</p> <p>19 Q. And you get the most points by hitting center</p> <p>20 mass?</p> <p>21 A. Yes.</p> <p>22 Q. And at how many feet do you shoot at that target</p> <p>23 to qualify?</p> <p>24 A. You do several stages at -- initially it's ten</p> <p>25 yards -- roughly, approximately, ten yards and then it</p> <p style="text-align: right;">60</p>
<p>1 A. Yes.</p> <p>2 Q. And what's that?</p> <p>3 A. It's the Smith & Wesson 340 PD.</p> <p>4 Q. Do you have that with you today?</p> <p>5 A. Yes.</p> <p>6 Q. Why?</p> <p>7 A. I'm an off duty officer.</p> <p>8 Q. Do you always carry a weapon when you're off</p> <p>9 duty?</p> <p>10 A. Not always.</p> <p>11 Q. Just at depositions?</p> <p>12 A. You know, coming to the City, it's a long trip.</p> <p>13 Q. Do you sleep with it?</p> <p>14 A. No.</p> <p>15 Q. How many guns do you own?</p> <p>16 A. I own just one.</p> <p>17 Q. Just that one other handgun that you mentioned?</p> <p>18 A. Yes, my off duty.</p> <p>19 Q. Oh.</p> <p>20 A. No, I'm sorry. I own two. I also have a gun</p> <p>21 that was given to me by my great uncle.</p> <p>22 Q. And what kind of gun is that?</p> <p>23 A. That's a Colt 1911. It's a World War II pistol.</p> <p>24 Q. Is Mr. -- well, did you shoot Mr. Desantis, do</p> <p>25 you know, if your bullet hit him?</p> <p style="text-align: right;">59</p>	<p>1 goes back to -- let me see -- 15 or 17 back to 20 -- 20 or</p> <p>2 25, something like that.</p> <p>3 Q. So the closest is ten yards or 30 feet?</p> <p>4 A. I think. I don't recall specifically.</p> <p>5 Q. Something in that ball park?</p> <p>6 A. Yeah.</p> <p>7 Q. How far was Mr. Desantis from you when you fired</p> <p>8 at him?</p> <p>9 A. When I fired at him he was approximately 10 to</p> <p>10 15 feet.</p> <p>11 Q. And was he coming right at you?</p> <p>12 A. Yes.</p> <p>13 Q. And where did you aim?</p> <p>14 A. Center mass.</p> <p>15 Q. Could you tell whether you hit him?</p> <p>16 A. No.</p> <p>17 Q. And when you fired at him was he standing?</p> <p>18 A. Yes.</p> <p>19 Q. And how far -- did he take some steps after that</p> <p>20 before he fell, or did he just drop after you shot him?</p> <p>21 A. He just dropped.</p> <p>22 Q. Okay. Was he running toward you when you shot</p> <p>23 him?</p> <p>24 A. Yes.</p> <p>25 Q. And did it appear to you that the shot that you</p> <p style="text-align: right;">61</p>

<p>1 fired caused him to just kind of stop in mid air and his</p> <p>2 momentum just stopped and he dropped?</p> <p>3 A. I pulled the trigger and he kind of turned to his</p> <p>4 left and fell.</p> <p>5 Q. How fast was he running towards you when you</p> <p>6 fired?</p> <p>7 A. He was in a dead sprint. I don't know how fast</p> <p>8 he was going, but it was human sprinting speed.</p> <p>9 Q. And how many steps would he have had to taken to</p> <p>10 reach you?</p> <p>11 MS. FOWLER: At the point in time when he shot</p> <p>12 him?</p> <p>13 MR. SCOTT: Q. Yes.</p> <p>14 A. I don't know how long his stride was. He was</p> <p>15 within 10 to 15 feet so estimate maybe four strides,</p> <p>16 maybe.</p> <p>17 Q. Okay. And did you see him take any strides after</p> <p>18 you shot?</p> <p>19 A. No.</p> <p>20 Q. Which way did he fall?</p> <p>21 A. He kind of spun to his left and fell back onto</p> <p>22 his back. So it would be he spun his left to my left,</p> <p>23 turned to my right, fell to his -- kind of fell back to</p> <p>24 his left -- excuse me, my left.</p> <p>25 Q. When he fell how far away was he from you?</p> <p style="text-align: right;">62</p>	<p>1 A. M-hm, yes.</p> <p>2 Q. And his arms were moving like a sprinter?</p> <p>3 A. Yes.</p> <p>4 Q. And you could see his hands?</p> <p>5 A. Yes.</p> <p>6 Q. Did you see anything in his hands?</p> <p>7 A. No.</p> <p>8 Q. And what were you afraid he was going to do if</p> <p>9 you hadn't shot him?</p> <p>10 A. Kill me.</p> <p>11 Q. And how did you think he was going to kill you?</p> <p>12 A. With a gun.</p> <p>13 Q. With what gun?</p> <p>14 A. The gun I assumed he had.</p> <p>15 Q. And did you shoot him because you assumed he had</p> <p>16 a gun?</p> <p>17 A. Under the circumstances I think it was within</p> <p>18 reason to assume he had a gun, yes, he was armed.</p> <p>19 Q. So it would be fair to say that you shot because</p> <p>20 you assumed he had a gun?</p> <p>21 A. I shot because I thought he was coming to kill</p> <p>22 me.</p> <p>23 Q. Did you think he was going to kill you with a gun</p> <p>24 you assumed he had?</p> <p>25 A. I felt it was reasonable.</p> <p style="text-align: right;">64</p>
<p>1 A. 10 to 15 feet.</p> <p>2 MS. FOWLER: The closest point of him?</p> <p>3 MR. SCOTT: Q. Yes, the closest point.</p> <p>4 A. 10 to 15 feet.</p> <p>5 Q. Okay. And did he fall anywhere near a vehicle?</p> <p>6 A. Yes.</p> <p>7 Q. What type of vehicle?</p> <p>8 A. I believe it was a small truck, I think.</p> <p>9 Q. How far was that vehicle from you at the time you</p> <p>10 fired?</p> <p>11 A. Approximately 10 to 15 feet.</p> <p>12 Q. Did -- when you fired were you in a position of</p> <p>13 cover?</p> <p>14 A. Yes.</p> <p>15 Q. And why were you in a position of cover?</p> <p>16 A. Because I didn't want to get shot.</p> <p>17 Q. And did you ever see a gun in Mr. Desantis's</p> <p>18 hand?</p> <p>19 A. No.</p> <p>20 Q. Did you ever see a gun on his person?</p> <p>21 A. No.</p> <p>22 Q. And when he was sprinting towards you was it a</p> <p>23 full sprint?</p> <p>24 A. Yes.</p> <p>25 Q. And you could see his arms?</p> <p style="text-align: right;">63</p>	<p>1 Q. Then if he was going to shoot you with a gun, why</p> <p>2 would he run at you? Why not just stop, pull out the gun</p> <p>3 and fire?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. Are you right or lefthanded?</p> <p>6 A. Righthanded.</p> <p>7 Q. When you initially got to the scene, you walked</p> <p>8 from your patrol car and you had your weapon drawn.</p> <p>9 What's the first thing you did when you got to the -- in</p> <p>10 the vicinity of the residence and the parking lot or the</p> <p>11 driveway?</p> <p>12 A. The first thing I did when I got to the driveway?</p> <p>13 Q. Yes.</p> <p>14 A. I took cover and concealment around the corner of</p> <p>15 the house.</p> <p>16 Q. And what was the lighting like?</p> <p>17 A. Dim.</p> <p>18 Q. Were you able to see the Desantis -- what you</p> <p>19 discovered was the Desantis house?</p> <p>20 A. Yes.</p> <p>21 Q. And did you see anyone in the vicinity of the</p> <p>22 house?</p> <p>23 A. Yes.</p> <p>24 Q. Who did you see?</p> <p>25 A. I saw a man and a woman.</p> <p style="text-align: right;">65</p>

<p>1 Ellsworth. Did you see him at some point?</p> <p>2 A. Yes.</p> <p>3 Q. When did you first see him?</p> <p>4 A. He arrived just after I did at the scene.</p> <p>5 Q. And do you know what position he was in at the</p> <p>6 time you made the initial command?</p> <p>7 A. He was to my right. I don't know where, though.</p> <p>8 He was back to my right.</p> <p>9 Q. And did you understand that he was concealed in</p> <p>10 some fashion or --</p> <p>11 A. I don't know.</p> <p>12 Q. -- that he had cover?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know if he had the dog with him, Duke?</p> <p>15 A. Yes, he did.</p> <p>16 Q. You saw Duke?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did someone ask you to make the initial</p> <p>19 command or did you do that on your own?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall someone asking you to do it?</p> <p>22 A. I don't recall.</p> <p>23 Q. You just recall seeing the man who we now know as</p> <p>24 Mr. Desantis to kind of turn and walk towards you going</p> <p>25 inside the house?</p> <p style="text-align: right;">82</p>	<p>1 November 15th, 2007 and the time is 4:26. Back on the</p> <p>2 record.</p> <p>3 MR. SCOTT: Q. If we could get back to the</p> <p>4 diagram and kind of where we were in our time line, now</p> <p>5 you have just made some commands and -- towards</p> <p>6 Mr. Desantis. The first time you made a command did he</p> <p>7 react at all? Did he stop walking or just keep walking?</p> <p>8 A. I believe at that point he stopped and turned.</p> <p>9 Q. With your initial command?</p> <p>10 A. Yes.</p> <p>11 Q. And approximately how far was he from the front</p> <p>12 door of the residence when he stopped and turned?</p> <p>13 A. I believe he was at the base of the steps.</p> <p>14 Q. And could you still see his wife?</p> <p>15 A. She was out front also.</p> <p>16 Q. So she was still in plain view?</p> <p>17 A. Yes.</p> <p>18 Q. And after he stopped and turned, what did you do</p> <p>19 next?</p> <p>20 A. I told him to get his hands in the air, get his</p> <p>21 hands high, something of that line.</p> <p>22 Q. What did he do?</p> <p>23 A. As I recall, he didn't do it initially. I had to</p> <p>24 keep yelling at him to get his hands up.</p> <p>25 Q. Approximately how many times?</p> <p style="text-align: right;">84</p>
<p>1 A. Yes.</p> <p>2 Q. And your response was to verbalize a command to</p> <p>3 tell him words to the effect, stop, put your hands where I</p> <p>4 can see them?</p> <p>5 A. Yes.</p> <p>6 Q. And what did Mr. Desantis do in response to that</p> <p>7 command?</p> <p>8 A. After several commands he turned -- okay?</p> <p>9 Q. Yeah, we have to stop this tape, but you can</p> <p>10 finish this answer?</p> <p>11 A. After several commands he stopped, turned around,</p> <p>12 put his hands up.</p> <p>13 MR. SCOTT: We need to take a break to change</p> <p>14 tapes, so let's take a short break.</p> <p>15 THE VIDEOGRAPHER: This marks the end of volume</p> <p>16 1, videotape 1, in the deposition of Travis Menke on</p> <p>17 November 15th, 2007. The time now is 4:05 and we're off</p> <p>18 the record.</p> <p>19 (Brief recess taken from 4:05 p.m. to 4:26 p.m.)</p> <p>20 THE VIDEOGRAPHER: This marks the beginning of</p> <p>21 volume 1, videotape number 2 in the deposition of Travis</p> <p>22 Menke on November 15th, 2007 in the matter of Patricia</p> <p>23 Desantis, et al., versus City of Santa Rosa, et al., in</p> <p>24 the United States District Court, Northern District of</p> <p>25 California, case number C 07 3386 JSW. Today's date is</p> <p style="text-align: right;">83</p>	<p>1 A. I believe two to three.</p> <p>2 Q. And after those two to three commands to put his</p> <p>3 hands up, did he?</p> <p>4 A. Yes.</p> <p>5 Q. So he put his hands in the air?</p> <p>6 A. Yes.</p> <p>7 Q. With palms open?</p> <p>8 A. I don't recall.</p> <p>9 Q. And you wanted to see his hands because you</p> <p>10 wanted to see if he had a weapon in his hands, right?</p> <p>11 A. Yes.</p> <p>12 Q. And you were expecting to see a gun or possibly</p> <p>13 see a gun?</p> <p>14 A. It was reasonable to assume that, yes.</p> <p>15 Q. And did you see a gun in his hands?</p> <p>16 A. Not that I could see at that point.</p> <p>17 Q. Did you ever see a gun in his hands?</p> <p>18 A. No.</p> <p>19 Q. So he put his hands in the air, and for how long</p> <p>20 was he standing there with his hands in the air?</p> <p>21 A. Mr. Desantis dropped his hands several times, so</p> <p>22 he put them up for maybe a couple seconds. I told him to</p> <p>23 walk towards the sound of my voice. He then proceeded --</p> <p>24 obviously, there were several commands. He would drop his</p> <p>25 hands, so for the first time I told him to put his hands</p> <p style="text-align: right;">85</p>

<p>1 Q. Approximately how many commands did you have to 2 make before he dropped to his knees?</p> <p>3 A. I estimate two to three.</p> <p>4 Q. At that point were you yelling?</p> <p>5 A. Yes.</p> <p>6 Q. Did he say anything in response?</p> <p>7 A. Not that I heard.</p> <p>8 Q. Did you ever hear him say anything in response to 9 any of your commands?</p> <p>10 A. No, not that I heard.</p> <p>11 Q. When he initially dropped to his knees, was he 12 kneeling and facing toward you?</p> <p>13 A. Yes.</p> <p>14 Q. On both knees?</p> <p>15 A. I don't recall. At that point I simply tell a 16 person to drop down to their right next and then their 17 left knee. I would assume it was in some sort of that 18 fashion and he eventually got down on both knees, as I 19 recall.</p> <p>20 Q. And where was his hands at this point?</p> <p>21 A. As I said, he had dropped his hands. I had 22 called him to get back up. There was a point at 23 which when I was telling him to do this he was on both his 24 knees and his hands were in the air.</p> <p>25 Q. And then what happened next?</p> <p style="text-align: right;">90</p>	<p>1 command before he complied?</p> <p>2 A. I'd say two to three again.</p> <p>3 Q. And then what happened after he complied with 4 that command?</p> <p>5 A. He went down to his stomach, he dropped to his 6 stomach and he was down there for approximately a second.</p> <p>7 Q. And then what happened?</p> <p>8 A. He pushed himself back up, got back up on to his 9 knees.</p> <p>10 Q. Were his hands still on the ground?</p> <p>11 A. No, I believe at that point they were at his 12 side, although I don't recall specifically, but he pushed 13 up and raised up off the ground.</p> <p>14 Q. And was he facing you?</p> <p>15 A. Yes.</p> <p>16 Q. And what happened next?</p> <p>17 A. I told him to get back on the ground -- oh, 18 excuse me. Take a step back there. I began yelling, do 19 not get up, do not get up, get on your stomach, that sort 20 of thing. He rose up. I again told him get on his 21 stomach again.</p> <p>22 Q. And what's the next thing he did?</p> <p>23 A. After several commands, as I recall, he went back 24 down to his stomach. And at that point I began telling 25 him to get his arms out and get his arms out. At that</p> <p style="text-align: right;">92</p>
<p>1 A. I told him to put his hands on the ground in 2 front of him.</p> <p>3 Q. Did he do that?</p> <p>4 A. Yes.</p> <p>5 Q. Did he put his hands with open palm on the ground 6 in front of him?</p> <p>7 A. I couldn't tell. It was rather dark out. He put 8 his hands out on the ground in front of him.</p> <p>9 Q. Could you see his hands?</p> <p>10 A. I couldn't see if there was really anything in 11 his hands. I could just see that they were on the ground 12 and I couldn't tell if he had, you know, splayed fingers 13 or he had it on the side of his hands or what, but his 14 hands were on the ground in front of him. I couldn't see 15 anything with real definition.</p> <p>16 Q. And you couldn't tell if he was with open palms 17 or his fists?</p> <p>18 A. I couldn't tell, no.</p> <p>19 Q. And then what happened?</p> <p>20 A. I told him to slide away from his hands until he 21 was flat on his stomach.</p> <p>22 Q. And what did he do?</p> <p>23 A. He didn't comply initially, but after a few times 24 he eventually did that.</p> <p>25 Q. And how many times did you have to make that</p> <p style="text-align: right;">91</p>	<p>1 point he essentially pushed up and sprinted directly at 2 me.</p> <p>3 Q. Can you describe how he stood up at that point?</p> <p>4 A. He didn't stand up. Essentially, what happened 5 is he kind of brought his arms in to kind of a pushup 6 position. He did essentially a pushup and his body got 7 into somewhat of a mod- -- I want to describe it like a 8 modified sprinter stance with, you know, kind of the back 9 arched. I remember seeing like his shoulders and his 10 head, and then he went from pushup to that sprinter stance 11 and then directly at me.</p> <p>12 Q. Sprint?</p> <p>13 A. Sprinting, yes.</p> <p>14 Q. And leaning forward?</p> <p>15 A. Yes.</p> <p>16 Q. And what's the next thing that happened?</p> <p>17 A. It was all happening extremely rapidly. I felt 18 like I was yelling, but it seemed like my vision went 19 directly on to him. I heard something reminiscent like a 20 bang, clack or a bang, clack, clack. It was a bang and a 21 clack. It was just two distinct sounds. And what seemed 22 like an instant after that, I remember thinking to myself, 23 oh, my God, he's still coming, he's not stopping. And 24 once he had gotten to within about 10 to 15 feet of me, I 25 felt that he was coming to kill me, kill my partner, take</p> <p style="text-align: right;">93</p>

<p>1 my gun, so I pulled the trigger.</p> <p>2 Q. Okay. Now, you said bang and clack?</p> <p>3 A. Yes.</p> <p>4 Q. The bang that you heard, did you associate that</p> <p>5 with a particular weapon that was at the scene?</p> <p>6 A. It was very -- very kind of strange to me. The</p> <p>7 sound was -- it seemed altered. When my gun fired I</p> <p>8 didn't even hear it. I just heard a sound like a pop. I</p> <p>9 did not hear Patty's shot, even though she was just to my</p> <p>10 right. I can only assume that with the two distinct</p> <p>11 sounds, it may have been, like guessing --</p> <p>12 MS. FOWLER: Don't guess.</p> <p>13 THE WITNESS: Oh. In my estimation at that point</p> <p>14 I assumed it was the Sage round, the fire, and then the</p> <p>15 coil of the spring-loaded chambers for additional Sage</p> <p>16 rounds will rotate. So if you fire a shot it rotates to</p> <p>17 get to the next shot because it makes kind of a distinct</p> <p>18 sound.</p> <p>19 MR. SCOTT: Q. And you heard that sound?</p> <p>20 A. Yes, that's I what believed it was.</p> <p>21 Q. So you heard -- was that the bang, clack?</p> <p>22 A. I think.</p> <p>23 Q. All right. And when you heard the bang, clack,</p> <p>24 did it appear to you that Mr. Desantis was wounded?</p> <p>25 A. No, he just kept coming.</p> <p style="text-align: right;">94</p>	<p>1 Q. Had you ever heard that term used in any</p> <p>2 training?</p> <p>3 A. We were trained to shoot to stop, followed by an</p> <p>4 area assessment.</p> <p>5 Q. What is area assessment?</p> <p>6 A. The way I was trained in the Contra Costa academy</p> <p>7 was to shoot to stop, that is, shoot until the threat has</p> <p>8 stopped, that the threat is no longer a threat to you, at</p> <p>9 which time you essentially assess the area for any other</p> <p>10 threats, other threats to anybody else, you, yourself,</p> <p>11 that type of thing.</p> <p>12 Q. Have you ever been trained to try to determine if</p> <p>13 the person you shot had been hit before you fire another</p> <p>14 shot?</p> <p>15 A. To assess if the person had been hit?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. Okay. How many shots did you hear fired, total?</p> <p>19 A. Shots from what?</p> <p>20 Q. From anything. When you were there.</p> <p>21 A. I heard the bang, clack and my -- and my pistol,</p> <p>22 and that was it.</p> <p>23 Q. So you did not hear the rifle?</p> <p>24 A. No.</p> <p>25 Q. Correct?</p> <p style="text-align: right;">96</p>
<p>1 Q. So you didn't hear or see anything to -- that</p> <p>2 would indicate to you that he'd been hit?</p> <p>3 A. No.</p> <p>4 Q. Correct?</p> <p>5 A. Hm-m.</p> <p>6 Q. Correct?</p> <p>7 A. Correct. That is correct, yes.</p> <p>8 Q. You didn't think he'd been hit?</p> <p>9 A. No.</p> <p>10 Q. Did you hear a rifle fired?</p> <p>11 A. Say again.</p> <p>12 Q. Did you hear a rifle being fired?</p> <p>13 A. Not with any certainty, no.</p> <p>14 Q. So the only thing you recall hearing was the</p> <p>15 bang, clack from what you think was the Sage?</p> <p>16 A. Yes.</p> <p>17 Q. And approximately how much time passed from when</p> <p>18 you heard the bang, clack of the Sage to the time you</p> <p>19 fired?</p> <p>20 A. It was really enough for me to think that, oh, my</p> <p>21 God, he's not stopping. Within a second.</p> <p>22 Q. Okay. So a second or less?</p> <p>23 A. Yeah.</p> <p>24 Q. Are you familiar with the term shoot and assess?</p> <p>25 A. Not entirely.</p> <p style="text-align: right;">95</p>	<p>1 A. No, I did not.</p> <p>2 Q. Well, let me ask it this way. Did you hear a</p> <p>3 rifle fire?</p> <p>4 A. Not that I could hear, not that I could</p> <p>5 distinguish.</p> <p>6 Q. Did you hear your gun discharge?</p> <p>7 A. Yes.</p> <p>8 Q. Did you hear Officer Mann's gun discharge?</p> <p>9 A. No, I did not.</p> <p>10 Q. Why did you only fire one shot?</p> <p>11 A. Because immediately after I fired my shot, he</p> <p>12 went down.</p> <p>13 Q. And I think you've described how he fell. After</p> <p>14 he fell, what's the next thing you did?</p> <p>15 A. At that point we -- still with guns drawn. He</p> <p>16 was not moving. We approached to take him into custody.</p> <p>17 Q. Oh. I'd like to get back to this diagram, and if</p> <p>18 you could -- have you got a pen handy or -- yeah, you have</p> <p>19 one there. Next to the X could you put the number 1</p> <p>20 there. So when you were talking about when you first got</p> <p>21 there and they were talking -- the man and the woman were</p> <p>22 talking by the front door, that would be number 1.</p> <p>23 A. M-hm.</p> <p>24 Q. Could you give me an approximation -- and write</p> <p>25 in number 2 there -- where Mr. Desantis was when he went</p> <p style="text-align: right;">97</p>

STATE OF CALIFORNIA

I do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting; that thereafter, the witness was given an opportunity to read and correct the deposition transcript, and to subscribe the same; that if unsigned by the witness, the signature has been waived in accordance with stipulation between counsel for the respective parties.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand the 28th
day of November, 2007.

Judy A. Mantre
Certified Shorthand Reporter

CSR No. 4748